

PATRICK H. HICKS, ESQ., Bar # 4632
KAITLYN M. BURKE, ESQ., Bar # 13454
LITTLER MENDELSON, P.C.
3960 Howard Hughes Parkway
Suite 300
Las Vegas, NV 89169-5937
Telephone: 702.862.8800
Fax No.: 702.862.8811
Email: phicks@littler.com
Email: kmburke@littler.com

Attorneys for Defendants
WYNDHAM VACATION RESORTS, INC.
and WYNDHAM VACATION OWNERSHIP

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOHN DEMARIGNY, an individual,
Plaintiff,

vs.

WYNDHAM VACATION RESORTS,
INC., a foreign corporation; SHELL
VACATIONS CM CORP., a foreign
corporation; WYNDHAM VACATION
OWNERSHIP, a foreign entity DOES 1
through 10 inclusive; ROE
CORPORATIONS / ENTITIES 1 through
10 inclusive,
Defendants.

Case No.: 2:18-cv-00817-JCM-NJK

**STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIALITY OF
INFORMATION AND DOCUMENTS**

Pursuant to Fed. R. Civ. P. 26(c), L.R. 6-2, and L.R. 7-1, Plaintiff JOHN DEMARIGNY (“Plaintiff”) together with Defendants WYNDHAM VACATION RESORTS, INC. and WYNDHAM VACATION OWNERSHIP (“Defendants”), by and through their respective counsel of record, hereby stipulate and agree as to following Proposed Stipulated Protective Order regarding the confidentiality of discovery materials.

///

///

1 Plaintiff has on its own and at Defendants' request disclosed confidential, private information
2 of Plaintiff, including, but not limited to, Plaintiff's medical records, medical history, tax
3 information, and/or employment records, which Plaintiff has an interest in maintaining privacy to
4 maximum extent permitted under law for limited purposes of this lawsuit.

5 Disclosure and discovery activity in the above-captioned action are likely to involve the
6 production of confidential, proprietary, or private information for which special protection from
7 public disclosure and use for any purpose other than prosecuting this litigation may be warranted.
8 The parties acknowledge that this protective order does not confer blanket protection for all
9 disclosures or responses to discovery and that the protection it affords from public disclosure and use
10 extends only to the limited information or items that are entitled to confidential treatment under the
11 applicable legal principles.

12 **1. Definition of "Confidential Information."** "Confidential Information,"
13 which may be designated as provided in paragraph 5 below, is defined as follows: trade secrets,
14 protected contacts, business contacts, business practices, procedures and processes, non-public
15 customer information (e.g., customer lists, customer names and contact information, etc.), financial
16 information (non-public profits and loss information, financial statements, etc.), contractual
17 relationships, marketing practices and procedures, management policies and procedures, sensitive
18 personnel information including terms of employment, salary, bonus agreements, performance
19 evaluations, personnel files, human resources investigations, Plaintiff's medical records, social
20 security number, account numbers, address and/or other and confidential or private employee and
21 Plaintiff information.
22

23 **2. Use Limitations.** All Confidential Information produced in the course of
24 discovery proceedings herein shall be used only for the purpose of preparing for and conducting this
25 litigation (including appeals) and not for any other purpose whatsoever.
26
27
28

1 **3.1** If any party to another legal proceeding, or a court or an administrative
2 agency, through discovery, subpoenas, or orders, demands production of Confidential Information,
3 the party receiving such demand for Confidential Information shall promptly, and before producing
4 Confidential Information to such other party, court, or administrative agency, notify (1) the
5 requesting party, court, or administrative agency of this Protective Order; and (2) the party whose
6 Confidential Information is being sought.
7

8 **3.1.1** The party whose Confidential Information is being sought shall
9 have the obligation of defending against such subpoena, order, or demand, and the person or party
10 receiving the subpoena, order or demand shall be entitled to comply with it except to the extent the
11 producing party is successful in obtaining an order modifying or quashing the subpoena, order or
12 demand.
13

14 **4. Confidential Information Produced by Third Parties.** This Protective
15 Order shall apply to the parties to this action, and also to any other person producing or disclosing
16 Confidential Information in this action who agrees or is ordered to be bound by this Protective
17 Order. Accordingly, as used herein, the term “person” includes both the named parties in this civil
18 action, and third parties who have agreed or been ordered to be bound by this Protective Order. If, in
19 the course of this action, information is sought from a third party which would require such person to
20 disclose and/or produce Confidential Information, such third party may obtain the protections of this
21 Protective Order by agreeing in writing to produce information pursuant to this Protective Order and
22 to be bound by it. No further order of this Court shall be necessary to extend the protections of this
23 Order to third parties.
24

25 ///

26 ///

27 ///
28

1 **5. Designation of Confidential Information.** Any person who produces, gives,
2 or files Confidential Information may designate information as Confidential Information if it meets
3 the definition stated in paragraph 1; provided, however, that any designation of Confidential
4 Information shall not constitute an admission by any other party that such Confidential Information
5 is confidential or trade secret information as defined under applicable legal standards. Filing a
6 motion under the Local Rules requesting leave to file information or material under seal or
7 subsequently filing any document containing information designated “Confidential” under seal
8 pursuant to paragraph 2.1, shall not constitute an admission by the filing party that such Confidential
9 Information of another party is confidential or trade secret information as defined under applicable
10 legal standards.
11

12 **5.2 Designation of Documents.** Documents may be designated as
13 Confidential Information by stamping “Confidential” (or similar designation) on each page prior to
14 production. To the extent documents containing Confidential Information subject to this Protective
15 Order were previously produced without any designation of confidentiality, such documents shall be
16 stamped “Confidential” and reproduced.
17

18 **5.3 Designation of Deposition Testimony.** Deposition testimony may be
19 designated, in whole or in part, as Confidential Information by oral designation on the record, or
20 within ten (10) days after receipt of the transcript with designations as specified below. If made on
21 the record, the person making the designation shall instruct the Court Reporter to bind the
22 “Confidential” portions of the deposition transcript separately and to stamp the word “Confidential”
23 (or similar designation) as appropriate, on each transcript page so designated. All deposition
24 testimony shall be treated as “Confidential” pending expiration of the ten (10) day period after
25 receipt of the transcript.
26
27
28

1 **5.4 Depositions & Discovery Prior to Stipulation and Order.** Any
2 documents already submitted by the parties to the other party or their counsels in this lawsuit that
3 would otherwise be deemed confidential and/or “Attorney’s Eyes Only” or otherwise subject to the
4 terms of this Stipulation and Order shall be allowed to be retroactively designated as such, subject to
5 terms of this Stipulation. By this reference, Plaintiff hereby designates the video and written
6 transcript of day one of Plaintiff’s video-taped deposition testimony and any subsequent days of
7 Plaintiff’s or his spouse’s video-taped deposition, including, but not limited to, Plaintiff’s medical
8 records, medical history, whether such medical information is related to the claims and defenses in
9 this lawsuit or not, as Confidential for use in purposes of this litigation only.
10

11 **6. Persons to Whom Confidential Information May be Disclosed.**

12 **6.1 “Confidential Information.”** Except as otherwise provided by this
13 Protective Order, information designated as “Confidential” shall be disclosed only to:
14

15 **6.1.1** Counsel of record for the parties in this action, and other
16 attorneys, clerical, paralegal, and other staff employed by counsel of record;

17 **6.1.2** Independent experts or independent consultants who are
18 assisting counsel of record for the parties in this action in the prosecution or defense of this action.
19 Before access is given, each such independent expert or independent consultants shall agree in
20 writing to be bound by this Protective Order by completing and signing the form attached hereto as
21 Exhibit A and advised that violation of the terms of this Protective Order (by use of the Confidential
22 Information for business purposes or in any other impermissible manner) may constitute contempt of
23 Court.
24

25 **6.1.3** Individuals named as parties, and such officers, directors, or
26 employees of the parties, as counsel requires to provide assistance in the prosecution or defense of
27 this action, and for no other purpose;
28

1 **6.1.4** The Court and court personnel;
2 **6.1.5** Any other Person as to whom the producing Person agrees in
3 writing;

4 **6.1.6** Witnesses at deposition or trial qualified under paragraphs
5 6.4.1 and 6.4.2; provided, however, that before access is given, each such witness shall have agreed
6 in writing to be bound by this Protective Order by completing and signing the form attached hereto
7 as Exhibit A and advised that violation of the terms of this Protective Order (by use of the
8 Confidential Information for business purposes or in any other impermissible manner) may
9 constitute contempt of Court; and
10

11 **6.1.7** Court reporters employed in connection with this action.

12 **6.2 “Confidential – Attorneys’ Eyes Only” Information.** Notwithstanding
13 any other provision of this Protective Order, information designated as “Confidential – Attorneys’
14 Eyes Only” shall be disclosed *only* to the following:
15

16 **6.2.1** Persons described in paragraph 6.1.1.

17 **6.2.2** Persons described in paragraph 6.1.4, ~~provided that the~~
18 ~~documents are handled consistent with paragraph 2.1 above.~~ See order issued concurrently
19 herewith

20 **6.2.3** Persons described in paragraph 6.1.5.

21 **6.2.4** Witnesses and independent experts or consultants (as defined in
22 paragraph 6.1.2) at deposition or trial, provided that the producing person agrees in writing, and that
23 such witness and/or independent expert or consultant (as defined in paragraph 6.1.2) shall have
24 agreed in writing to be bound by this Protective Order by completing and signing the form attached
25 hereto as Exhibit A.

26 ///

27 ///

1 **6.3 Disclosure of Confidential Transcripts to the Deponent.**

2 Deposition transcripts containing Confidential Information may be shown to the deponent for the
3 purpose of correction, but the deponent may not retain a copy of the transcript unless the deponent
4 agrees to be bound by this Protective Order by signing a copy of the acknowledgment form attached
5 as Exhibit A.
6

7 **6.4 Limited Exceptions:**

8 **6.4.1 Persons Previously Having Access to Confidential**
9 **Information.** A producing party's Confidential Information to which a present or former employee,
10 consultant or agent has had access during the period of his employment or association with the
11 producing party may be disclosed to that present or former employee, consultant or agent.
12

13 **6.4.2 Authors/Addressees.** This Protective Order shall not apply to
14 the disclosure of a producing party's Confidential Information to persons who were the authors or
15 addressees of those documents or who are shown as having received copies.

16 **6.4.3 Witnesses.** If a document designated as Confidential
17 Information refers to the conduct or affairs of a witness, the parties' attorneys may discuss such
18 conduct or affairs with the witness without revealing the document.
19

20 **6.4.4 Certain Information Not Subject to Scope of Order.** The
21 restrictions of this Protective Order shall not apply to information which (a) was, is, or becomes
22 public knowledge, not in violation of this Protective Order, or (b) was or is acquired from a third
23 party possessing such information and having no obligation of confidentiality to the designating
24 party, or (c) the receiving party can establish was in its rightful and lawful possession at the time of
25 disclosure or was developed independently by the receiving party without the use of Confidential
26 Information.
27
28

1 **6.4.5. Permissible Disclosures/Access**

2 Except as set forth herein, Confidential information, and any facts or information contained
3 therein or derived therefrom, shall be disclosed only to the Court on the condition that the Court
4 enters an order similar to this Protective Order and/or to: (a) the Parties in the Action, including
5 their agents, officers, directors and employees, but only to the extent that such disclosure is
6 necessary for the conduct of litigation in the Action; (b) outside counsel for the Parties hereto and
7 their agents, employees, paralegals, or other secretarial and clerical employees or agents; (c) experts,
8 independent contractors, consultants, or advisors who are employed or retained by, or on behalf of,
9 one or more of the Parties to the Action or their counsel to assist in preparation of the Action for
10 trial; (d) deponents and their counsel who have a need to review this material during the course of, or
11 in connection with, depositions taken in or for the Action; (e) stenographic reporters who are
12 involved in depositions, the trial or any hearings or proceedings before the Court in the Action; (f)
13 people who have previously received or created the document; and (g) witnesses in the Action who
14 need to review this material in connection with their testimony in the Action. Confidential
15 information may be disclosed to persons listed in this paragraph only after such person has been
16 shown a copy of this Protective Order and agrees to be bound by the terms of this Protective Order
17 in the form attached hereto as Exhibit A. In the event an authorized person does not execute Exhibit
18 A expressly agreeing to be bound by the Protective Order, the Parties and the Court will nevertheless
19 deem the authorized person to be so bound.
20
21
22

23 **7. Resolution of Disputes.** Whenever a party objects to the treatment of a
24 document or transcript as “Confidential” as defined in paragraphs 1 and 5 herein, it shall, in writing
25 or on the record in any proceeding herein, so inform the party seeking “Confidential” treatment. The
26 failure of a party to object in a timely manner shall not constitute a waiver. The party proposing
27 such treatment may thereafter apply to the Court by motion for a ruling that the document or
28

Such motion may be filed only after completion of a proper pre-filing conference. See Local Rule 26-7(c).

1 transcript shall be treated as “Confidential” in the manner described in paragraphs 1 and 5 herein.
2 Such motion shall be made within a reasonable period of time after notice of the objection to a
3 “Confidential” designation is given. Upon such application, the party asserting confidentiality bears
4 the burden to establish same. Until the Court enters an Order changing the designation of the
5 document or transcript which is to be the subject of the application, it shall be afforded the
6 “Confidential” treatment described in paragraphs 1 and 5 herein.
7

8 **8. Disposition of Confidential Information Following Conclusion of**
9 **Litigation.** At the conclusion of this litigation (i.e., upon its final dismissal), all copies of all
10 documents or transcripts designated “Confidential” and any copies thereof, shall either be destroyed
11 or returned to the party or person producing same.
12

13 **8.1** Notwithstanding any of the foregoing, counsel of record may maintain
14 a complete set of pleadings, non-confidential deposition transcripts and exhibits, and non-
15 confidential trial transcripts and exhibits following conclusion of this litigation.

16 **9. Unauthorized Disclosure or Inadvertent Production.** If either party learns
17 that, by inadvertence or otherwise, it has disclosed Confidential Information to any person or in any
18 circumstance not authorized under this protective order, the receiving party must immediately (a)
19 notify the designating party in writing of the unauthorized disclosure, (b) use its best efforts to
20 retrieve all unauthorized copies of the confidential material, (c) inform the person(s) of the terms of
21 the protective order, and (d) request such person(s) execute Exhibit A. Pursuant to Federal Rule of
22 Evidence 502(d) and (e), attorney-client, work product, or any other privilege will not be waived by
23 disclosure connected to this litigation. As a result, the parties agree that nothing in this protective
24 order will be deemed to limit or waive the attorney-client, work product, or any other privilege.
25

26 ///

27 ///

1 **10. Continuing Obligation, Retention of Jurisdiction.** This Order shall
2 continue to be binding after the conclusion of this litigation, and the Court shall retain limited
3 jurisdiction over the parties hereto for purposes of enforcing any obligations imposed hereby.
4

5 **11.** Until such time as this Protective Order has been entered by the District Court,
6 the parties agree that upon execution by the parties, it will be treated as though it has been “So
7 Ordered.”

8 Dated: September 20, 2018

Dated: September 20, 2018

9 Respectfully submitted,

Respectfully submitted,

10 /s/ M. Lani Esteban-Trinidad, Esq.

/s/ Kaitlyn M. Burke, Esq.

11 **THE THATER LAW GROUP, P.C.**

LITTLER MENDELSON, P.C.

12 M. Lani Esteban-Trinidad, Esq.

Patrick H. Hicks, Esq.

Kaitlyn M. Burke, Esq.

13 Attorney for Plaintiff

John De Marigny

Attorneys for Defendants

WYNDHAM VACATION RESORTS, INC.

And WYNDHAM VACATION OWNERSHIP,
INC.

16 **IT IS SO ORDERED.**

17 
18 _____
UNITED STATES MAGISTRATE JUDGE

19 DATED: September 21, 2018
20 _____
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I hereby state that I have read and received a copy of the Stipulated Protective Order Governing the Confidentiality of Information and Documents (the “Order”) in *John Demarigny v, Wyndham Vacation Resorts, Inc., et. al., Case No. 2:18-cv-00817 JCM-NJK*, pending in the United States District Court, District of Nevada (the “Court”). I understand the terms of the Order, agree to be bound by those terms, and consent to the jurisdiction of the Court with respect to enforcement of the Order.

Date: _____ City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]

FIRMWIDE:157129851.2 041582.2073